



TITLE: FAR Strategy Cases of Interest

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**Presenter: Robin
Schulze**

Title: Senior Procurement
Analyst

Phone Number: (703) 602-0326

E-mail: robin.schulze@osd.mil

Presenter: Debbie Tronic

Title: Senior Procurement Analyst

Phone Number: (703) 602-0289

E-mail: debbie.tronic@osd.mil

Web site: <http://www.acq.osd.mil/dpap/dars/>



Cases of Interest

- ▶ Emergency Acquisitions
- ▶ Local Community Recovery Act of 2006
- ▶ Brand Name Specifications
- ▶ Documentation Requirements for Limited Sources under FSSs
- ▶ Incentives for Performance-Based Service Contracts
- ▶ Performance-Based Acquisitions



Cases of Interest

- ▶ Increased J&A Threshold for DoD
- ▶ Telecommuting for Federal Contractors
- ▶ On the Horizon



Emergency Acquisitions

- ▶ Provides a single reference to existing flexibilities
- ▶ Facilitates and expedites acquisitions during all types of emergencies
 - Unusual and compelling
 - Contingency operations
 - Defense or recovery from certain attacks
 - National emergencies
- ▶ Issue is level of coverage



Local Community Recovery Act

- ▶ Implements the Local Community Recovery Act of 2006 (Pub. L. 109-218)
- ▶ May use local area set-asides for—
 - Debris clearance
 - Distribution of supplies
 - Reconstruction
 - Other major disaster or emergency assistance
- ▶ CO determines the geographic area for set-aside, e.g., all or some part of the affected area
- ▶ **May be** used with small business set-asides
- ▶ Imposes subcontracting restrictions to promote local recovery efforts



Brand Name Specifications

- ▶ Implements OMB's April 2005 and 2006 policy memos on proper use of brand name specifications
- ▶ Must publish the justification for brand name specifications to the GPE or e-Buy
 - Applies to acquisitions over \$25,000, including simplified acquisitions, FSS, and sole source
- ▶ Intended to limit the use of brand name and provide for maximum competition



Documentation Requirements for Limited Sources under FSSs

- ▶ Establishes J&A requirements for orders over micro-purchase threshold that **restrict consideration** of schedule contractors
- ▶ Services without SOW and supplies
 - **Consideration restricted** if not surveying or reviewing catalogs or price lists for three schedule contractors
- ▶ Services with SOW
 - **Consideration restricted** if RFQ not provided to at least three schedule contractors



Incentives for Performance-Based Service Contracts

- ▶ Implements Sec. 1431 and 1433 of National Defense Authorization Act of 2004 (P. L. 108-136)
- ▶ May use Part 12 for services that do not meet the definition of a commercial item if—
 - Contract or task order—
 - Meets the definition of a “performance-based acquisition”
 - Has a value of \$27M or less
 - Specifies a FFP for specific tasks to be performed or outcomes achieved
 - Uses a quality assurance surveillance plan
 - Provider provides similar services to the general public under similar T&Cs



Performance-Based Acquisitions

- ▶ Changes terminology from “performance-based contracting” to “performance-based acquisition”
- ▶ Adds definitions for “performance work statement” and “statement of objective”
- ▶ Adds new requirement for program officials to describe agency needs in performance-based terms to the maximum extent practicable



Performance-Based Acquisitions

Continued

- ▶ Clarifies that the appropriate “type of contract” is not impacted by PBA

For services, greater use of performance-based contracting methods and, therefore, fixed-price contracts (see 37.602-5) should occur for follow-on acquisitions.

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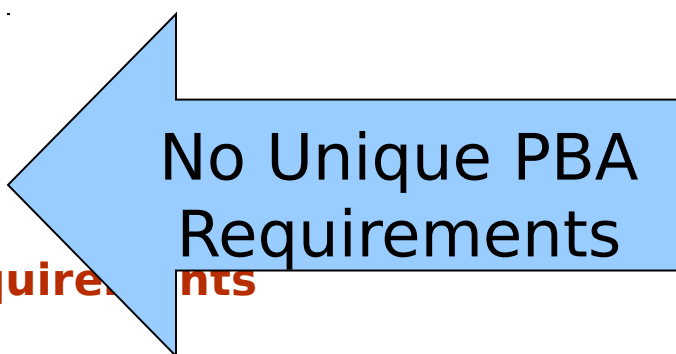
- ▶ Eliminates coverage in Subpart 37.6 that duplicated other FAR coverage

37.602-2 Quality assurance

37.602-3 Selection procedures

37.602-4 Contract type

37.602-5 Follow-on and repetitive requirements



No Unique PBA Requirements



More Cases of Interest

- ▶ Increased J&A Threshold Only impacts DoD, NASA, and the Coast Guard
- ▶ Telecommuting for Federal Contractors



On the Horizon

- ▶ Additional Commercial Contract Types
- ▶ Payments Under Time-and-Materials and Labor-Hours Contracts
- ▶ Reps and Certs – Tax Delinquencies
- ▶ Government Purchase Card Restrictions for Delinquent Federal Debt
- ▶ Contract Debt
- ▶ Numbered Notes for Synopses



Cases of Interest

- ▶ Procurement Program for Service-Disabled Veteran-Owned Small Business Concerns
- ▶ Confirmation of HUBZone Certification
- ▶ Expiration of the Price Evaluation Adjustment for Civilian Agencies Except NASA and Coast Guard



FAR Case 2004-002

Procurement Program for Service-Disabled Veteran-Owned

Small Business Concerns

► **Source:**

- **Sec. 308 Veterans Benefit Act of 2003 (15 USC 657(f))**

► **Synopsis:**

- **May set-aside acquisition over the micro-purchase threshold:**
 - **(1) if reasonable expectation that offers will be received from two or more SDVOSBs, and**
 - **(2) award will be made at a fair market price**
- **May award sole source if:**
 - **1) only one SDVOSB can satisfy the requirement,**
 - **2) anticipated award price does not exceed \$5.5M for manufacturing and \$3M for all other, and**
 - **3) award can be made at a fair and reasonable price**

►



FAR Case 2004-002 Procurement Program for Service-Disabled Veteran- Owned Small Business Concerns

► Synopsis (con't):

- Doesn't apply to requirements:**
 - Currently being performed by an 8(a)**
 - Satisfied through Federal Prison Industries, Inc.**
 - Satisfied through Javits-Wagner-O'Day Act participating non-profit agencies, or**
 - Orders under IDIQ contracts or Federal Supply Schedules**



FAR Case 2005-009

Confirmation of HUBZone Certification

► Source:

- DoD IG Report D-2003-019, “DoD Contractor Subcontracting with HUBZone Small Businesses”**

► Synopsis:

- Contractors must confirm that subcontractors representing themselves as HUBZone small businesses are certified by the Small Business Administration (SBA) as HUBZone small businesses**



FAR Case 2005-002 Expiration of the Price Evaluation Adjustment for Civilian Agencies Except NASA and Coast Guard

► Source:

- **Statutory authority expired for civilian agencies, except NASA and Coast Guard, which are covered under a separate statute**

► Synopsis:

- **Civilian agencies, except NASA and Coast Guard, are no longer authorized to apply the small disadvantaged business price evaluation adjustment (PEA)**
- **(Note - DoD has authority but use of PEA has been suspended until March 9, 2007 iaw 10 USC 2323(e))**



On the Horizon

- ▶ HubZone Program Revisions
- ▶ Small Business Credit for Alaska Native Corporations and Indian Tribes